

**DR. JULIA GRUBER AND
ANDREW SMITH**

V.

Defendants.

Case No. 2:21-CV-00039

Judge Crenshaw
Magistrate Judge Newbern

JURY DEMAND

Defendants¹ in this action, by and through the office of the Tennessee Attorney General and Reporter, hereby move this Court to dismiss Plaintiffs' claims against Tennessee Technological University, Dr. Gruber in her official capacity, and Dr. Oldham, in his official capacity ("State Defendants"). The claims asserted against State Defendants under 42 U.S.C. § 1983 must be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) due to lack of subject matter jurisdiction and pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim due to state sovereign immunity.

This Motion does not address Plaintiffs' claims for liability against either Defendant Dr. Bruce in her individual capacity or Dr. Oldham in any capacity other than his official capacity (as he is not yet served in his individual capacity). Defendant Dr. Bruce requests that she be permitted

¹ Defendants in this motion include solely Tennessee Technological University, Dr. Bruce (in her official and individual capacity) and Dr. Oldham (in his official capacity only, as he has not yet been served individually). Defendants specifically preserve and do not waive any affirmative defenses by bringing this partial motion to dismiss at this time.

to file an answer to the claims against her in her individual capacity —and any other remaining claims—fourteen days after this Court has ruled on the Motion for Partial Dismissal. Defendant Dr. Oldham requests that he similarly be permitted to file an answer to the claims against him in his individual capacity —and any other remaining claims—fourteen days after this Court has ruled on the Motion for Partial Dismissal or he is served in his individual capacity and his time to answer runs, whichever occurs later in time, to assure he and Dr. Bruce can file one comprehensive answer to any remaining claims. Under Federal Rule of Civil Procedure 12(a)(4), the service of a motion to dismiss extends the time for Defendant to file a responsive pleading until fourteen days after the court’s ruling on the motion. Although the Rule itself does not specify, “the majority of federal courts that have addressed the issue have held that filing a partial motion to dismiss does indeed extend the time to file a responsive pleading with respect to all claims, including those not addressed in the motion.” *Compton v. City of Harrodsburg, Ky.*, 287 F.R.D. 401, 402 (E.D. Ky. 2012). Defendants thus request that the time to file an answer to all claims be postponed until fourteen days after this Court’s ruling on its partial motion to dismiss as to Defendant Dr. Bruce and until fourteen days after this Court has ruled on the Motion for Partial Dismissal as to Defendant Dr. Oldham or he is served in his individual capacity and his time to answer runs, whichever occurs later in time.

A Memorandum of Law in support of this Motion is being filed contemporaneously herewith.

Respectfully submitted,

HERBERT H. SLATERY III
ATTORNEY GENERAL AND REPORTER

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2021, a copy of Defendants' Motion for Partial Dismissal was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt as follows:

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All other parties will be served by regular U.S. Mail as follows: N/A

Parties may access this filing through the Court's electronic filing system.

s/ John W. Dalton
JOHN W. DALTON, BPR No. 16653
Senior Assistant Attorney General